

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JUAN CARLOS CALDERON,
Plaintiff,
v.
K. ALLISON, et al.,
Defendants.

No. 2:21-cv-01896-CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

On January 20, 2022, the court screened plaintiff's complaint and concluded that it contained too many vague and conclusory allegations to be able to determine whether it stated any cognizable claims for relief or was frivolous. ECF No. 9. The court dismissed plaintiff's complaint, but granted him leave to amend. ECF No. 9. The screening order provided plaintiff with the relevant legal standards that appeared to apply to his allegations and advised him that unrelated claims against different defendants must be pursued in separate lawsuits. *Id.* at 8.

Plaintiff filed a first amended complaint on April 20, 2022.¹ ECF No. 14. However,

¹ The filing date has been calculated using the prison mailbox rule. *Houston v. Lack*, 487 U.S. 266 (1988).

1 before the court could screen this amended complaint, plaintiff filed a 27 page motion for leave to
2 amend to add defendants “and more accurate claims.” ECF No. 17. The court has reviewed
3 plaintiff’s motion to amend and determined that it is properly construed as a second amended
4 complaint. Therefore, the court will amend the docket to identify this pleading as plaintiff’s
5 second amended complaint. The court will proceed to screen plaintiff’s second amended
6 complaint pursuant to 28 U.S.C. § 1915A.

7 **I. Screening Requirement**

8 As plaintiff was previously advised, the court is required to screen complaints brought by
9 prisoners seeking relief against a governmental entity or officer or employee of a governmental
10 entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the
11 prisoner has raised claims that are legally “frivolous or malicious,” that fail to state a claim upon
12 which relief may be granted, or that seek monetary relief from a defendant who is immune from
13 such relief. 28 U.S.C. § 1915A(b)(1), (2).

14 **II. Factual Allegations in Second Amended Complaint**

15 Plaintiff recounts a twenty year conspiracy to deprive him of his constitutional rights
16 ranging from interfering with his mail, denying him medical care after “being infected with
17 chemical solution for years...,” confiscating his personal property in retaliation for grievances,
18 failing to protect him from assaults by other prisoners, and interfering in his juvenile resentencing
19 and parole hearings. ECF No. 17 at 6. Named as defendants are the Secretary of the California
20 Department of Corrections and Rehabilitation, the warden and assistant warden of Mule Creek
21 State Prison, various correctional officers and medical staff at the same prison, plaintiff’s former
22 criminal defense lawyers, and John Does 26-75. By way of relief, plaintiff seeks a treaty transfer
23 to a prison in his home country of Mexico as well as declaratory relief and compensatory
24 damages. ECF No. 17 at 21.

25 **III. Legal Standards**

26 **A. Joinder of Claims and Parties**

27 Under Rule 20 of the Federal Rules of Civil Procedure, plaintiff cannot bring unrelated
28 claims against different defendants. Simply put, plaintiff cannot join claims against defendant B

that have nothing to do with those brought against defendant A. Unrelated claims against different defendants must be pursued in separate lawsuits. See George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007). This rule is intended “not only to prevent the sort of morass [a multiple claim, multiple defendant] suit produce[s], but also to ensure that prisoners pay the required filing fees—for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of the required fees. 28 U.S.C. § 1915(g).” Id. In addition, a plaintiff may join multiple defendants in one action where “any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions and occurrences” and “any question of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2).

B. Linkage

The civil rights statute requires that there be an actual connection or link between the actions of the defendants and the deprivation alleged to have been suffered by plaintiff. See Monell v. Department of Social Services, 436 U.S. 658 (1978); Rizzo v. Goode, 423 U.S. 362 (1976). The Ninth Circuit has held that “[a] person ‘subjects’ another to the deprivation of a constitutional right, within the meaning of section 1983, if he does an affirmative act, participates in another’s affirmative acts or omits to perform an act which he is legally required to do that causes the deprivation of which complaint is made.” Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978) (citation omitted). In order to state a claim for relief under section 1983, plaintiff must link each named defendant with some affirmative act or omission that demonstrates a violation of plaintiff’s federal rights.

C. First Amendment Retaliation

“Within the prison context, a viable claim of First Amendment retaliation entails five basic elements: (1) An assertion that a state actor took some adverse action against an inmate (2) because of (3) that prisoner’s protected conduct, and that such action (4) chilled the inmate’s exercise of his First Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal. Rhodes v. Robinson, 408 F.3d 559 567-68 (9th Cir. 2005) (citations omitted). Filing an inmate grievance is a protected action under the First Amendment. Bruce v. Ylst, 351

1 F.3d 1283, 1288 (9th Cir. 2003). A prison transfer may also constitute an adverse action. See
 2 Rhodes v. Robinson, 408 F.3d 559, 568 (9th Cir. 2005) (recognizing an arbitrary confiscation and
 3 destruction of property, initiation of a prison transfer, and assault as retaliation for filing inmate
 4 grievances); Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995) (finding that a retaliatory prison
 5 transfer and double-cell status can constitute a cause of action for retaliation under the First
 6 Amendment).

7 **D. First Amendment Access to the Courts**

8 Plaintiff has a constitutional right of access to the courts and prison officials may not
 9 actively interfere with his right to litigate. Silva v. Vittorio, 658 F.3d 1090, 1101-02 (9th Cir.
 10 2011). Prisoners also enjoy some degree of First Amendment rights in their legal
 11 correspondence. Bounds v. Smith, 430 U.S. 817, 824-25 (1977). However, to state a viable
 12 claim for relief, plaintiff must allege he suffered an actual injury, which is prejudice with respect
 13 to contemplated or existing litigation, such as the inability to meet a filing deadline or present a
 14 non-frivolous claim. Lewis v. Casey, 518 U.S. 343, 349 (1996).

15 **E. Deliberate Indifference to Serious Medical Need**

16 Denial or delay of medical care for a prisoner's serious medical needs may constitute a
 17 violation of the prisoner's Eighth and Fourteenth Amendment rights. Estelle v. Gamble, 429 U.S.
 18 97, 104-05 (1976). An individual is liable for such a violation only when the individual is
 19 deliberately indifferent to a prisoner's serious medical needs. Id.; see Jett v. Penner, 439 F.3d
 20 1091, 1096 (9th Cir. 2006); Hallett v. Morgan, 296 F.3d 732, 744 (9th Cir. 2002); Lopez v.
 21 Smith, 203 F.3d 1122, 1131-32 (9th Cir. 2000).

22 In the Ninth Circuit, the test for deliberate indifference consists of two parts. Jett, 439
 23 F.3d at 1096 (citing McGuckin v. Smith, 974 F.2d 1050 (9th Cir. 1991)), overruled on other
 24 grounds by WMX Techs., Inc. v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc). First, the
 25 plaintiff must show a "serious medical need" by demonstrating that "failure to treat a prisoner's
 26 condition could result in further significant injury or the 'unnecessary and wanton infliction of
 27 pain.'" Id., citing Estelle, 429 U.S. at 104. "Examples of serious medical needs include '[t]he
 28 existence of an injury that a reasonable doctor or patient would find important and worthy of

comment or treatment; the presence of a medical condition that significantly affects an individual's daily activities; or the existence of chronic and substantial pain.” Lopez, 203 F. 3d at 1131-1132 (citing McGuckin, 974 F.2d at 1059-60).

Second, the plaintiff must show the defendant's response to the need was deliberately indifferent. Jett, 439 F.3d at 1096. This second prong is satisfied by showing (a) a purposeful act or failure to respond to a prisoner's pain or possible medical need and (b) harm caused by the indifference. Id. Under this standard, the prison official must not only “be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists,” but that person “must also draw the inference.” Farmer v. Brennan, 511 U.S. 825, 837 (1994). This “subjective approach” focuses only “on what a defendant's mental attitude actually was.” Id. at 839. A showing of merely negligent medical care is not enough to establish a constitutional violation. Frost v. Agnos, 152 F.3d 1124, 1130 (9th Cir. 1998) (citing Estelle, 429 U.S. at 105-106). A difference of opinion about the proper course of treatment is not deliberate indifference, nor does a dispute between a prisoner and prison officials over the necessity for or extent of medical treatment amount to a constitutional violation. See, e.g., Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004); Sanchez v. Vild, 891 F.2d 240, 242 (9th Cir. 1989). Furthermore, mere delay of medical treatment, “without more, is insufficient to state a claim of deliberate medical indifference.” Shapley v. Nev. Bd. of State Prison Comm'rs, 766 F.2d 404, 407 (9th Cir. 1985). Where a prisoner alleges that delay of medical treatment evinces deliberate indifference, the prisoner must show that the delay caused “significant harm and that Defendants should have known this to be the case.” Hallett, 296 F.3d at 745-46; see McGuckin, 974 F.2d at 1060.

F. Failure to Protect from Harm

Under the Eighth Amendment, “prison officials have a duty to protect prisoners from violence at the hands of other prisoners.” Farmer v. Brennan, 511 U.S. 825, 833 (1994) (internal quotation marks, ellipsis, and citation omitted). However, “not . . . every injury suffered by one prisoner at the hands of another . . . translates into constitutional liability for prison officials responsible for the victim's safety.” Id. at 834. A prison official may be held liable for an assault suffered by one inmate at the hands of another only where the assaulted inmate can show that the

injury is sufficiently serious, and that the prison official was deliberately indifferent to the risk of harm. Id. at 834, 837. Thus, the relevant inquiry is whether prison officials, “acting with deliberate indifference, exposed a prisoner to a sufficiently substantial risk of serious damage to his future health.” Id. at 834 (internal quotation omitted). To be deliberately indifferent, the “official must both be aware of facts from which the inference could be drawn that a substantial risk of serious harm exists, and he must also draw the inference.” Id.

G. Conspiracy

To state a claim for conspiracy under 42 U.S.C. § 1983, plaintiff must plead specific facts showing an agreement or meeting of minds between the defendants to violate his constitutional rights. Woodrum v. Woodward Cnty., 866 F.2d 1121, 1126 (9th Cir. 1989). Plaintiff must also show how an actual deprivation of his constitutional rights resulted from the alleged conspiracy. Id. ““To be liable, each participant in the conspiracy need not know the exact details of the plan, but each participant must at least share the common objective of the conspiracy.”” Franklin v. Fox, 312 F.3d 423, 441 (9th Cir. 2002) (quoting United Steel Workers of Am. V. Phelps Dodge Corp., 865 F.2d 1539, 1541 (9th Cir. 1989)).

The federal system is one of notice pleading, however, and the court may not apply a heightened pleading standard to plaintiff’s allegations of conspiracy. Empress LLC v. City and County of San Francisco, 419 F.3d 1052, 1056 (9th Cir. 2005); Galbraith v. County of Santa Clara, 307 F.3d 1119, 1126 (2002). Although accepted as true, the “[f]actual allegations must be [sufficient] to raise a right to relief above the speculative level....” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007). A plaintiff must set forth “the grounds of his entitlement to relief[,]” which “requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action....” Id.

H. Habeas versus § 1983

Claims concerning plaintiff’s trial and sentencing are not cognizable under § 1983. A habeas corpus petition pursuant to 28 U.S.C. § 2254 is the correct method for a prisoner to challenge the legality or duration of his confinement. See Muhammad v. Close, 540 U.S. 749, 750 (2004) (per curiam); Nettles v. Grounds, 830 F.3d 922, 934 (9th Cir. 2016) (en banc). Insofar

1 as plaintiff challenges his criminal proceedings, his claims are not cognizable in § 1983.

2 Furthermore, any of plaintiff's claims related to his criminal conviction are barred by Heck
3 v. Humphrey, 512 U.S. 477 (1994). The Heck bar preserves the rule that federal challenges,
4 which, if successful, would necessarily imply the invalidity of incarceration or its duration, must
5 be brought by way of petition for writ of habeas corpus, after exhausting appropriate avenues of
6 relief. Muhammad v. Close, 540 U.S. 749, 750–751 (2004). Accordingly, “a state prisoner's
7 [section] 1983 action is barred (absent prior invalidation)—no matter the relief sought (damages
8 or equitable relief), no matter the target of the prisoner's suit (state conduct leading to conviction
9 or internal prison proceedings)—if success in that action would necessarily demonstrate the
10 invalidity of confinement or its duration.” Wilkinson v. Dotson, 544 U.S. 74, 81–82 (2005).

11 **IV. Analysis**

12 Even after being advised of the rules pertaining to the joinder of multiple claims and
13 defendants, plaintiff expanded rather than narrowed the allegations in his second amended
14 complaint. As a result, the court remains unable to serve any defendant based on the improper
15 joinder of unrelated claims against multiple defendants in this single action. The court cannot
16 discern from the numerous allegations whether this is a case of retaliation, deliberate indifference
17 to serious medical needs, the failure to protect plaintiff from harm by other inmates, or a habeas
18 corpus challenge to plaintiff's criminal conviction. The court will grant plaintiff one last chance
19 to conform his amended complaint to the civil pleading rules. Plaintiff is warned that his
20 continued failure to improperly join multiple unrelated defendants into a single civil action will
21 result in a recommendation that this matter be dismissed pursuant to Rule 41(b) of the Federal
22 Rules of Civil Procedure. If he chooses to do so, plaintiff may proceed in this action only on
23 those claims against different defendants that arise out of the same transaction or occurrence, or
24 that involve a common question of law or fact.

25 If plaintiff chooses to file a third amended complaint, plaintiff must demonstrate how the
26 conditions complained of have resulted in a deprivation of plaintiff's federal constitutional or
27 statutory rights. See Ellis v. Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, the third amended
28 complaint must allege in specific terms how each named defendant is involved. There can be no

liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976); May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980); Johnson v. Duffy, 588 F.2d 740, 743 (9th Cir. 1978). Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's third amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This is because, as a general rule, an amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once plaintiff files a third amended complaint, the original pleading no longer serves any function in the case. Therefore, in a third amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

V. Plain Language Summary for Pro Se Party

The following information is meant to explain this order in plain English and is not intended as legal advice.

The court has reviewed your second amended complaint and determined that you did not fix the problems that were identified in the court's prior screening order. Your second amended complaint continues to improperly join unrelated claims and defendants in this single civil action. As a result, your second amended complaint is being dismissed. You are being given one last chance to fix the problems identified in this order. Should you choose to do so, you may file a third amended complaint within 30 days from the date of this order.

Although you are not required to do so, you may file a third amended complaint within 30 days from the date of this order. If you choose to file an amended complaint, pay particular attention to the legal standards identified in this order which may apply to your claims.

Accordingly, IT IS HEREBY ORDERED that:

1. The Clerk of Court shall modify the docket to reflect that plaintiff's "motion to amend" filed on August 8, 2022 is properly construed as plaintiff's second amended

1 complaint.

2 2. So construed, plaintiff's second amended complaint is dismissed with leave to amend.

3 3. Plaintiff is granted thirty days from the date of service of this order to file a third
4 amended complaint that complies with the requirements of the Civil Rights Act, the
5 Federal Rules of Civil Procedure, and the Local Rules of Practice. The third amended
6 complaint must bear the docket number assigned this case and must be labeled "Third
7 Amended Complaint." The failure to file a third amended complaint in accordance
8 with this order will result in a recommendation that this action be dismissed.

9 Dated: September 29, 2022



CAROLYN K. DELANEY
UNITED STATES MAGISTRATE JUDGE

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